IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 122 OF 2005

IN

SUIT NO.29 OF 2004

Naresh Rampadarath Choudhary
and Ors. ..... Plaintiffs
v/s.
Bhaguram Sudkaji Tambe and Ors ... Defendants
AND
Naresh Rampadarth Choudhary and
Ors. .... Respondents

S.D.Mogare i/b. R.C. Kaushik for the plaintiffs.
Manojkumar Upadhyay for defendant nos. 1 and 2.

CORAM: S.U. KAMDAR, J.

DATE : 15TH FEBRUARY, 2005.

P.C. :

1. The present chamber summons is taken out for transposition of plaintiff nos. 1 to 3 as defendant no.4 to 6.

2. The original suit has been filed by the plaintiffs no.1 to 4 for specific performance of agreement of sale dated 25.10.1990 and for consequential relief. It seems that the plaintiff

nos. 1 to 3 have settled the matter with the defendant no.1 and 2 who are the owners of the land. The plaintiff nos.1 to 3 have addressed a letter dated 10.1.2005 inter-alia conveying that in view of the fact they have settled the matter with defendant nos.1 to 3 they are not desirous of prosecuting the said suit any further and they have decided to file consent terms in the present suit. In view of the above the present chamber summons has been taken out to transpose the plaintiff nos.1 and 3 as defendant since they are not inclined any further to prosecute the present suit.

3. An affidavit of service has been filed dated 15.2.2005 serving the present chamber summons on the plaintiff nos.1 and 3 who are proposed to be transposed as defendant no.4 to 6. None appears on their behalf though they are served.

4. However the learned counsel for the defendant no.1 has vehemently oppose the present chamber summons. According to him the amendment is inconsistent with the plea which is already existing

in the present suit. It is his case that the plea for partition is not there in the original suit and is now sought to be introduced by virtue of the present amendment which would change the nature of the suit and thus the present chamber summons should be dismissed. I see no merits in the contention advanced by the learned counsel for defendant no.1. The original suit is for specific performance of an agreement which is in favour of the plaintiff no.1 to 4 jointly. The plaintiffs no.1 to 3 have now settled their claims. Thus plaintiff no.4 is required to seek specific performance of his agreement for sale in so far as his share in the land is concerned. His 1/4th share in the land being undivided he is also required to claim partition of the said property. Thus partition of the suit property being consequent of settlement of claim by the plaintiffs no.1 to 3 during the pendency of the suit. It is necessary to include necessary averments and prayers for the same.

5. In the event the plaintiff no.4 succeeds in the suit for specific performance then in that event

he will be having 1/4 undivided share in the said property alongwith plaintiff nos.1 to 3 who are now sought to be transposed as defendant no,.4 to 6. Thus it is obvious that as a necessary consequence the plaintiff will be required to claim partition of his 1/4 undivided share in the said property as and when the same is conveyed to him pursuant to the decree for specific performance passed. In view of the judgment of the Apex Court in the case of **Raghu Thuilak D. Joh vs. S. Rayappan and Ors. reported in (2001) 2 SCC 472** and followed in judgment **of Pankaja and Anr. Vs. Yellappa (Dead) by LRs and others reported in (2004) 6 SCC 415** even if an amendment is in consistent the same can be granted to avoid multiferiousness of the proceedings.

6. In view thereof I allow the present chamber summons in terms of prayer clause (a) and (b). Amendment to be carried out within 2 weeks from today. No order as to costs.

sd/-

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